



PATENT

Attorney Docket No. 1759.17208-FOR

Applicant or Inventor: Richard W. Layne, Robert M. Scribner, Christopher R. Ralph

Serial or Patent No.: 09/828,470

Filed or Issued: 6 April 2001

For: Insertion Devices and Method of Use

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY  
STATUS (37 CFR 1.9(F) and 1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am

       the owner of the small business concern identified below:  
X an official of the small business concern empowered to act on behalf of the concern  
identified below:

NAME OF CONCERN  
ADDRESS OF CONCERN

Kyphon Inc.  
1350 Bordeaux Drive  
Sunnyvale, California 94089-1005

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled

Insertion Devices and Method of Use

by inventor(s) Richard W. Layne, Robert M. Scribner, Christopher R. Ralph

described in

       the specification filed herewith.  
X application serial no. 09/828,470, filed 6 April 2001  
       patent no.                     , issued                     

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_

☐ INDIVIDUAL

☐ SMALL BUSINESS CONCERN

☐ NONPROFIT ORGANIZATION

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_

☐ INDIVIDUAL


☐ SMALL BUSINESS CONCERN

☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING \_\_\_\_\_ Karen Talmadge, Ph.D.  
TITLE OF PERSON OTHER THAN OWNER \_\_\_\_\_ Executive Vice President  
ADDRESS OF PERSON SIGNING \_\_\_\_\_ 1350 Bordeaux Drive  
\_\_\_\_\_ Sunnyvale, California 94089-1005

  
Karen Talmadge, Ph.D.

17 July 2001  
Date

Attorney's Docket No. 1759.17208-FOR

COMBINED DECLARATION AND POWER OF ATTORNEY  
(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,  
CONTINUATION OR CIP)

As a below named inventor, I hereby declare that:

## TYPE OF DECLARATION

This declaration is of the following type: *(check one applicable item below)*

- ☒ original  
☐ design  
☐ supplemental

NOTE: *If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.*

- ☐ national stage of PCT

NOTE: *If one of the following 3 items apply then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP.*

- ☐ divisional  
☐ continuation  
☐ continuation-in-part (CIP)

## INVENTORSHIP IDENTIFICATION

WARNING: *If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.*

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

## TITLE OF INVENTION

Insertion Devices and Method of Use

## SPECIFICATION IDENTIFICATION

the specification of which: *(complete (a), (b) or (c))*

- (a) ☐ is attached hereto.  
 (b) ☒ was filed on 6 April 2001 as ☒ Serial No. 09/ 828,470  
 or ☐ Express Mail No., as Serial No. not yet known \_\_\_\_\_  
 and was amended on \_\_\_\_\_ (if applicable).

NOTE: *Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.*

- (c) ☐ was described and claimed in PCT International Application No. \_\_\_\_\_  
 filed on \_\_\_\_\_ and as amended under PCT Article 19  
 on \_\_\_\_\_ (if any).

## ACKNOWLEDGMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

*(also check the following item, if desired)*

- ☐ In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

### PRIORITY CLAIM (35 U.S.C. § 119)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

*(complete (d) or (e))*

- (d) ☐ no such applications have been filed.
- (e) ☐ such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

#### A. PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. § 119

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUM- BER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES      NO <input type="checkbox"/>
			<input type="checkbox"/> YES      NO <input type="checkbox"/>
			<input type="checkbox"/> YES      NO <input type="checkbox"/>
			<input type="checkbox"/> YES      NO <input type="checkbox"/>
			<input type="checkbox"/> YES      NO <input type="checkbox"/>

ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION

---

---

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CIP APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. S 120.

POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

**Daniel D. Ryan (29,243)**  
**Joseph A. Kromholz (34,204)**  
**John M. Manion (38,957)**  
**Arnold J. Ericson (16,879)**

**Allan O. Maki (20,623)**  
**Patricia Jones (46,318)**  
**Daniel R. Johnson (46,204)**  
**Laura A. Dable (46,436)**

(check the following item, if applicable)

- [ ] Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

---

SEND CORRESPONDENCE TO  
Daniel D. Ryan

DIRECT TELEPHONE CALLS TO:  
Daniel D. Ryan (262) 783-1300

**RYAN KROMHOLZ & MANION, S.C.**  
Post Office Box 26618  
Milwaukee, Wisconsin 53226-0618

PHONE CALLS  
(262) 783 - 1300

---

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

## SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor

Richard W. Layne  
 (GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)  
 Inventor's signature *Richard W. Layne*  
 Date 7/17/01 Country of Citizenship US  
 Residence Palo Alto, CA  
 Post Office Address 1717 Woodland Avenue, #314  
Palo Alto, CA 94303

Full name of second joint inventor, if any

Robert M. Scribner  
 (GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)  
 Inventor's signature *Robert M. Scribner*  
 Date 12 July 2001 Country of Citizenship US  
 Residence Los Altos, CA  
 Post Office Address 1960 Colleen Drive  
Los Altos, CA 94024

Full name of third joint inventor, if any

Christopher R. Ralph  
 (GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)  
 Inventor's signature *Christopher Ralph*  
 Date 17 July 2001 Country of Citizenship US  
 Residence Mountain View, California  
 Post Office Address 375 Hope Street  
Mountain View, California 94041 *94041*

Full name of fourth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)  
 Inventor's signature \_\_\_\_\_  
 Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
 Residence \_\_\_\_\_  
 Post Office Address \_\_\_\_\_

Full name of fifth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)  
 Inventor's signature \_\_\_\_\_  
 Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
 Residence \_\_\_\_\_  
 Post Office Address \_\_\_\_\_

CHECK PROPER BOX(ES) FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH  
FORM A PART OF THIS DECLARATION

☐ Signature for sixth and subsequent joint inventors. Number of pages added \_\_\_\_\_

\*\*\*

☐ Signature by administrator(trix), executor(trix) or legal representative for deceased or  
incapacitated inventor. Number of pages added \_\_\_\_\_

\*\*\*

☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37  
CFR 1.47. Number of pages added \_\_\_\_\_

\*\*\*

☒ Added pages to combined declaration and power of attorney for divisional, continuation, or  
continuation-in-part (CIP) application.

☐ Number of pages added 4

\*\*\*

☐ Authorization of attorney(s) to accept and follow instructions from representative

\*\*\*

*(If no further pages form a part of this declaration then end this declaration with this page  
and check the following item:)*

☒ This declaration ends with this page



**PATENT**

**ADDED PAGES FOR APPLICATION TRANSMITTAL WHERE BENEFIT  
OF PRIOR U.S. APPLICATION(S) CLAIMED**

NOTE: "In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112." 37 CFR 1.78(a).

NOTE: "IN ADDITION THE PRIOR APPLICATION MUST BE (1) COMPLETE AS SET FORTH IN S 1.51, OR (2) ENTITLED TO A FILING DATE AS SET FORTH IN S 1.53(B) AND INCLUDE THE BASIC FILING FEE SET FORTH IN S 1.16; OR (3) ENTITLED TO A FILING DATE AS SET FORTH IN S 1.53(B) AND HAVE PAID THEREIN THE PROCESSING AND RETENTION FEE SET FORTH IN S 1.21(L) WITHIN THE TIME PERIOD SET FORTH IN S 1.53(D)." 37 CFR 1.78(A).

**17. Relate Back-35 U.S.C. 120**

NOTE: "ANY APPLICATION CLAIMING THE BENEFIT OF A PRIOR FILED COPENDING NATIONAL OR INTERNATIONAL APPLICATION MUST CONTAIN OR BE AMENDED TO CONTAIN IN THE FIRST SENTENCE OF THE SPECIFICATION FOLLOWING THE TITLE A REFERENCE TO SUCH PRIOR APPLICATION IDENTIFYING IT BY SERIAL NUMBER AND FILING DATE OR INTERNATIONAL APPLICATION NUMBER AND INTERNATIONAL FILING DATE AND INDICATING THE RELATIONSHIP OF THE APPLICATIONS." 37 CFR 1.78(A). SEE ALSO THE NOTICE OF APRIL 28, 1987 (1079 O.G. 32 TO 46).

[ x ] Amend the Specification by inserting the following information before the first line:

**Related Application:** This application claims benefit of application 60/195,207 filed 7 April 2000.

NOTE: THE PROPER REFERENCE TO A PRIOR FILED PCT APPLICATION WHICH ENTERED THE U.S. NATIONAL PHASE IS THE U.S. SERIAL NUMBER AND THE FILING DATE OF THE PCT APPLICATION WHICH DESIGNATED THE U.S.

NOTE: (1) WHERE THE APPLICATION BEING TRANSMITTED ADDS SUBJECT MATTER TO THE INTERNATIONAL APPLICATION THEN THE FILING CAN BE AS A CONTINUATION-IN-PART OR (2) IT IS DESIRED TO DO SO FOR OTHER REASONS, E.G. WHERE NO DECLARATION IS AVAILABLE, NO ENGLISH TRANSLATION IS AVAILABLE OR NO FEE IS TO BE PAID ON FILING THEN THE FILING CAN BE AS A CONTINUATION. IN THESE CASES THE INTERNATIONAL APPLICATION DESIGNATING THE U.S. IS TREATED AS THE PARENT CASE IN THE U.S. AND IS AN ALTERNATIVE TO THE COMPLETION OF THE INTERNATIONAL APPLICATION UNDER 35 U.S.C. 371(C)(4) WHICH MUST MEET THE REQUIREMENTS OF 37 CFR 1.61(A). THIS ALTERNATIVE PERMITS THE COMPLETION OF THE FILING REQUIREMENTS WITHIN ANY TERM SET BY THE PTO UNDER 37 CFR 1.53(D) TO WHICH THE EXTENSION PROVISIONS OF 37 CFR 1.136(A) APPLY. (WHEREAS, IF THE FILING IS AS AN INTERNATIONAL APPLICATION ENTERING THE U.S. STAGE THEN THE FEE, DECLARATION AND/OR ENGLISH TRANSLATION (WHERE NECESSARY) IS DUE WITHIN 20 MONTHS OF THE PRIORITY DATE BUT CAN BE PAID WITHIN 22 MONTHS OF THE PRIORITY DATE (OR IS DUE WITHIN 30 MONTHS OF THE PRIORITY DATE BUT CAN BE SUBMITTED WITHIN 32 MONTHS OF THE PRIORITY DATE) WITH THE SURCHARGES SET FORTH IN 37 CFR 1.492(E), (F) AND 37 CFR 1.495(C); HOWEVER, THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THIS 22 OR (32 MONTH) PERIOD. 37 CFR 1.61(B).)

NOTE: THE DEADLINE FOR ENTERING THE NATIONAL PHASE IN THE U.S. FOR AN INTERNATIONAL APPLICATION WAS CLARIFIED IN THE NOTICE OF APRIL 28, 1987 (1079 O.G. 32 TO 46) AS FOLLOWS:

"The Patent and Trademark Office considers the International application to be pending until the 22nd month from the priority date if the United States has been designated and no Demand for International Preliminary Examination has been filed prior to the expiration of the 19th month from the priority date and until the 32nd month from the priority date if a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of the 19th month from the priority date, provided that a copy of the international application has been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively. If a copy of the international application has not been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively, the international application becomes abandoned as to the United States 20 or 30



months from the priority date respectively. These periods have been placed in the rules as paragraph (h) of S 1.494 and paragraph (i) of S 1.495. A continuing application under 35 U.S.C. 365(c) and 120 may be filed anytime during the pendency of the international application."

**18. Relate Back-35 U.S.C. 119 Priority Claim for Prior Application**

The prior U.S. application(s), including any prior International Application designating the U.S., identified above in item 17, in turn itself claim(s) foreign priority (ies) as follows:

	country	appl. no.	filed on
The certified copy (ies) has (have)			
<input type="checkbox"/>	been filed on _____ in prior application 0 / _____ which was filed on _____.		
<input type="checkbox"/>	is (are) attached		

**WARNING:** THE CERTIFIED COPY OF THE PRIORITY APPLICATION WHICH MAY HAVE BEEN COMMUNICATED TO THE PTO BY THE INTERNATIONAL BUREAU MAY NOT BE RELIED ON WITHOUT ANY NEED TO FILE A CERTIFIED COPY OF THE PRIORITY APPLICATION IN THE CONTINUING APPLICATION. THIS IS SO BECAUSE THE CERTIFIED COPY OF THE PRIORITY APPLICATION COMMUNICATED BY THE INTERNATIONAL BUREAU IS PLACED IN A FOLDER AND IS NOT ASSIGNED A U.S. SERIAL NUMBER UNLESS THE NATIONAL STAGE IS ENTERED. SUCH FOLDERS ARE DISPOSED OF IF THE NATIONAL STAGE IS NOT ENTERED. THEREFORE SUCH CERTIFIED COPIES MAY NOT BE AVAILABLE IF NEEDED LATER IN THE PROSECUTION OF A CONTINUING APPLICATION. AN ALTERNATIVE WOULD BE TO PHYSICALLY REMOVE THE PRIORITY DOCUMENTS FROM THE FOLDERS AND TRANSFER THEM TO THE CONTINUING APPLICATION. THE RESOURCES REQUIRED TO REQUEST TRANSFER, RETRIEVE THE FOLDERS, MAKE SUITABLE RECORD NOTATIONS, TRANSFER THE CERTIFIED COPIES, ENTER AND MAKE A RECORD OF SUCH COPIES IN THE CONTINUING APPLICATION ARE SUBSTANTIAL. ACCORDINGLY, THE PRIORITY DOCUMENTS IN FOLDERS OF INTERNATIONAL APPLICATIONS WHICH HAVE NOT ENTERED THE NATIONAL STAGE MAY NOT BE RELIED ON. NOTICE OF APRIL 28, 1987 (1079 O.G. 32 TO 46).

**19. Maintenance of Copendency of Prior Application**

**NOTE:** THE PTO FINDS IT USEFUL IF A COPY OF THE PETITION FILED IN THE PRIOR APPLICATION EXTENDING THE TERM FOR RESPONSE IS FILED WITH THE PAPERS CONSTITUTING THE FILING OF THE CONTINUATION APPLICATION. NOTICE OF NOVEMBER 5, 1985 (1060 O.G. 27).

**A. ☐ Extension of time in prior application**

(This item MUST BE COMPLETED AND THE PAPERS FILED IN THE PRIOR APPLICATION IF THE PERIOD SET IN THE PRIOR APPLICATION HAS RUN)

- ☐ A petition, fee and response extends the term in the pending prior application until \_\_\_\_\_.
- ☐ A copy of the petition filed in prior application is attached

**B. [ ] Conditional Petition for Extension of Time in Prior Application**

(complete this item if previous item not applicable)

- [ ] A conditional petition for extension of time is being filed in the pending prior application.
- [ ] A copy of the conditional petition filed in the prior application is attached

**20. Further Inventorship Statement Where Benefit of Prior Application(s) Claimed**

*NOTE: IF THE CONTINUATION, CONTINUATION-IN-PART, OR DIVISIONAL APPLICATION IS FILED BY LESS THAN ALL THE INVENTORS NAMED IN THE PRIOR APPLICATION A STATEMENT MUST ACCOMPANY THE APPLICATION WHEN FILED REQUESTING DELETION OF THE NAMES OF THE PERSON OR PERSONS WHO ARE NOT INVENTORS OF THE INVENTION BEING CLAIMED IN THE CONTINUATION, CONTINUATION-IN-PART, OR DIVISIONAL APPLICATION. 37 CFR 1.62(A) [EMPHASIS ADDED]. (DEALING WITH THE FILE WRAPPER CONTINUATION SITUATION).*

*NOTE: IN THE CASE OF A CONTINUATION-IN-PART APPLICATION WHICH ADDS AND CLAIMS ADDITIONAL DISCLOSURE BY AMENDMENT, AN OATH OR DECLARATION AS REQUIRED BY S 1.63 MUST BE FILED. IN THOSE SITUATIONS WHERE A NEW OATH OR DECLARATION IS REQUIRED DUE TO ADDITIONAL SUBJECT MATTER BEING CLAIMED, ADDITIONAL INVENTORS MAY BE NAMED IN THE CONTINUING APPLICATION. IN A CONTINUATION OR DIVISIONAL APPLICATION WHICH DISCLOSES AND CLAIMS ONLY SUBJECT MATTER DISCLOSED IN A PRIOR APPLICATION, NO ADDITIONAL OATH OR DECLARATION IS REQUIRED AND THE APPLICATION MUST NAME AS INVENTORS THE SAME OR LESS THAN ALL THE INVENTORS IN THE PRIOR APPLICATION. 37 CFR 1.60(C). (DEALING WITH THE CONTINUATION SITUATION).*

(complete applicable item (a), (b) and/or (c) below)

- (a) [ ] This application discloses and claims only subject matter disclosed in the prior application whose particulars are set out above and the inventor(s) in this application are
- [ ] the same.
- [ ] less than those named in the prior application and it is requested that the following inventor(s) identified for the prior application be deleted:

---

(type name(s) of inventor(s) to be deleted)

- (b) [ ] This application discloses and claims additional disclosure and a new declaration or oath is being filed. With respect to the prior application the inventor(s) in this application are
- [ ] the same.
- [ ] the following additional inventor(s) have been added

---

(type name(s) of inventor(s) to be added)

(c) The inventorship for all the claims in this application are

☒ the same.

☐ not the same, and an explanation, including the ownership of the various claims at the time the last claimed invention was made

☐ is submitted.

☐ will be submitted.

**21. Abandonment of Prior Application (if applicable)**

☐ Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application.

NOTE: ACCORDING TO THE NOTICE OF MAY 13, 1983 (103, TMOG 6-7) THE FILING OF A CONTINUATION OR CONTINUATION-IN-PART APPLICATION IS A PROPER RESPONSE WITH RESPECT TO A PETITION FOR EXTENSION OF TIME OR A PETITION TO REVIVE AND SHOULD INCLUDE THE EXPRESS ABANDONMENT OF THE PRIOR APPLICATION CONDITIONED UPON THE GRANTING OF THE PETITION AND THE GRANTING OF A FILING DATE TO THE CONTINUING APPLICATION.

**22. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment**

WARNING: THE CLAIMS OF A NEW APPLICATION MAY BE FINALLY REJECTED IN THE FIRST OFFICE ACTION IN THOSE SITUATIONS WHERE (1) THE NEW APPLICATION IS A CONTINUING APPLICATION OF, OR A SUBSTITUTE FOR, AN EARLIER APPLICATION, AND (2) ALL THE CLAIMS OF THE NEW APPLICATION (A) ARE DRAWN TO THE SAME INVENTION CLAIMED IN THE EARLIER APPLICATION, AND (B) WOULD HAVE BEEN PROPERLY FINALLY REJECTED ON THE GROUNDS OF ART OF RECORD IN THE NEXT OFFICE ACTION IF THEY HAD BEEN ENTERED IN THE EARLIER APPLICATION." MPEP, S 706.07(B).

NOTE: WHERE IT IS POSSIBLE THAT THE CLAIMS ON FILE WILL GIVE RISE TO A FIRST ACTION FINAL FOR THIS CONTINUATION APPLICATION AND FOR SOME REASON AN AMENDMENT CANNOT BE FILED PROMPTLY (E.G., EXPERIMENTAL DATA IS BEING GATHERED) IT MAY BE DESIRABLE TO FILE A PETITION FOR SUSPENSION OF PROSECUTION FOR THE TIME NECESSARY.

(check the next item, if applicable)

☐ There is provided herewith a Petition To Suspend Prosecution for the Time Necessary to File An Amendment (New Application Filed Concurrently)



PATENT 1759.17208-FOR

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Richard W. Layne, et al.

Group No.: 3738

Serial No.: 09/828,470

Examiner: Unknown

Filed: 6 April 2001

For: Insertion Device and Method of Use

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**STATEMENT BY ATTORNEY THAT APPLICATION FILED IN PTO IS THE  
ONE INVENTOR(S) EXECUTED BY SIGNING DECLARATION**

I, Daniel D. Ryan, Registration No. 29,243, of RYAN KROMHOLZ & MANION, S.C., P.O. Box 26618, Milwaukee, Wisconsin 53226-0618, {(262) 783-1300} state I am an attorney for this application and the application identified above is the application which the inventor(s) executed by signing the declaration which is being submitted herewith.

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Mary Szollar

(Type or print name of person mailing paper)

Date: 25 July 2001

(Signature of person mailing paper)